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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,210	12/09/2003	B. Thomas Barker	4002-	4618
53196 7590 06/24/2009				
MEDTRONIC				
Attn: Noreen Johnson - IP Legal Department				
2600 Sofamor Danck Drive				
MEMPHIS, TN 38132				
EXAMINER				
SWIGER III, JAMES L				
ART UNIT		PAPER NUMBER		
3775				
MAIL DATE		DELIVERY MODE		
06/24/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/731,210

Applicant(s)

BARKER ET AL.

Examiner

JAMES L. SWIGER

Art Unit

3775

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 44-46, 48-52, 55, 58, 70-72 and 74-77 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 44-46, 48-52, 55, 58, 70-72 and 74-77 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/9/2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsman's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 44-46, 48-52, 70-72, 74-77 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nichols (US Patent 6,090,111) in view of Lombardo (US Publication 2001/0001119). Nichols discloses a medical implant apparatus comprising a receiver having a longitudinal axis defining an upper opening portion and a lower opening portion (see Fig. 2), and a channel transverse to a communicating with said upper opening (see Fig. 3) that is capable of holding a longitudinal element (12). Nicholas further disclose a receiver element that has an interior groove (64), that is substantially perpendicular to the axis. Nicholas further discloses a retaining member having an inner dimension and an outer dimension (42) that occupies the groove (fig. 4), and further wherein this retaining member comprises a substantially planar structure (a generally flat circular ring) and that further has an overall height therebetween and has a body width that is substantially constant throughout the retaining member between the top surface and the bottom surface along the overall height. The generally circular ring also has a gap which can allow it to be expanded and contracted. Nicholas also discloses a bone anchor (14) that is received in the receiver member. The ring surrounds a portion of the head of the bone anchor.

Nichols discloses the claimed invention except for where the upper portion of the receiver member is threaded or a medical implant apparatus having a set screw.

Lombardo discloses a medical implant apparatus having a receiver member further having upper internal threads as well as a set screw to interface with them. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Nichols having at least the upper threads or the set screw in view of Lombardo to have a stronger biasing and securing of a longitudinal member to secure the vertebrae.

Claims 55 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nicholas in view of Lombardo and Jackson (US Publication 2002/0072751). Nicholas in view of Lombardo disclose the claimed invention except for a receiver having reverse angle threads. Jackson discloses reverse angle threads incorporated into a receiver body (see par 0046). Reverse angle threads would help to keep the side branches of the receiver from splaying and would encourage the receiver to have a low profile in use. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Nicholas in view of Lombardo having at least the reverse angle threads of Jackson so that the overall size of the device can be more controlled during implantation.

Response to Arguments

Applicant's showing of common ownership for claim 58 and rewriting that claim into independent form necessitates this Non-Final action.

Regarding applicant's arguments submitted 2/27/2009, applicant's correction of the Non-compliant amendment submitted 2/20/2009 is acknowledged.

Regarding applicant's arguments submitted 10/14/2008, they have been fully considered in view of applicant's amendments. However the claims still read on prior art; rejections are enclosed herewith.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES L. SWIGER whose telephone number is (571)272-5557. The examiner can normally be reached on M-F 9-530.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Barrett can be reached on 571-272-4746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JAMES L. SWIGER/
Examiner, Art Unit 3775

/Thomas C. Barrett/
Supervisory Patent Examiner, Art
Unit 3775